HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

WRIT APPEAL No. 1291 OF 2006

Between:

M/s Vengamamba Stone Crusher,
Eleswaram, East Godavari District

..... Appellant

AND

The Government of Andhra Pradesh,
Rep. By its Secretary,
Industries and Commwerce/M.II (1) Department,
Hyderabad & others

.....Respondents

:: J U D G M E N T ::

Counsel for the appellant : Shri T. Rajendra Prasad

Counsel for the respondents : Government Pleader for Mines and Geology

Dated: 11.12.2006

Per G.S.SINGHVI, CJ

This is an appeal for setting aside order dated 01.11.2006 passed by the learned Single Judge whereby he dismissed the writ petition filed by the appellant for quashing orders dated 20.06.2006 and 29.08.2006 passed by Deputy Director of Mines and Geology, Kakinada, East Godavari District (respondent No.3) and Secretary to Government, Industries and Commerce (M.II) Department (hereinafter described as 'the revisional authority') respectively.

It is borne out from the record that the appellant was granted quarry lease over an area of 9 hectares in Survey No.53 of Chinasankarlapudi Village, Prathipadu Mandal, East Godavari District on three different occasions. Two of the leases are valid up to 2012. On 04.04.2006, respondent No.3 issued notice requiring the appellant to show cause as to why seigniorage charges amounting Rs.37,72,215/- may not be recovered from it in view of the unauthorized quarrying of road metal. The appellant filed detailed reply dated 17.05.2006 and denied the allegation of unauthorized quarrying. It also averred that the persons to whom leases had been granted between 1986-1991 and 1992-1997 may have indulged in unauthorized quarrying. After receipt of the reply, respondent No.3 referred the mater to Assistant Director, Mines and Geology, Rajahmundry to offer his remarks. The latter vide his letter dated 13.06.2006 submitted detailed remarks virtually exonerating the lessees who had undertaken quarrying operations before the appellant. Thereafter, respondent No.3 vide his order dated 20.06.2006 not only held the appellant liable to pay

seigniorage fee but also imposed ten times penalty in terms of Rule 26(2) of the Andhra Pradesh Minor Mineral Concession Rules, 1966 (for short 'the Rules').

The appellant challenged the aforementioned order by filing revision which was partly allowed by the revisional authority vide order dated 29.08.2006. The revisional authority maintained the demand of seigniorage fee but set aside the penalty.

Feeling dissatisfied with the revisional order, the appellant preferred writ petition under Article 226 of the Constitution of India which was registered as Writ Petition No. 22465 of 2006. One of the grounds taken by the petitioner for questioning the legality of the orders impugned in the writ petition was that it has not been given reasonable opportunity of hearing and the objections taken in the reply to the show cause notice had not been considered by respondent No.3 in an objective manner. It was also pleaded that the report sent by the Assistant Director had been taken into consideration without giving it an opportunity to controvert the same. This is evinced from paragraphs 6 and 7 of the affidavit filed in support of the writ petition, which are reproduced below:

> "6. I submit that suddenly the 3rd respondent passed final orders and issued impugned demand notice dated 20-6-2006 without giving any opportunity of personal hearing and without even supplying the alleged survey report to us. In the said proceedings it is stated that the ADMG informed that previously two quarry leases were granted in S.No.54 and the said persons in whose favour the leases were granted obtained transport permits for the quantity of only 4,000 cubic meters and 2000 cubic meters respectively and the said 6,000 cubic meters has been deducted from the quantity dispatched by us which is

totally false and incorrect. As admittedly, the area in which the leases were granted in our favour is located in S.No.53 and not in S.No.54 and therefore the question of deduction of the said quantity excavated in S.No.54 from the quantity excavated by us did not arise. From the above, it is also clear that they have not deducted the quantity of metal excavated by our previous lease holders in S.No.53. Admittedly, we are not having any leases in S.No.54. The final orders were passed only basing on the report said to have been submitted by the ADMG and they have not even considered various contentions raised by us and the material produced by us. They have not even given any opportunity of personal hearing to us before passing the final orders. In the impugned orders except simply saying that the reply submitted by us is not considerable, no reasons were given for rejecting our explanation and contentions. From the above it is clear that they have not applied their mind and they have not taken into consideration the explanation submitted by us and passed orders directing me to pay an amount of Rs.4,14,94,365 towards normal seigniorage fee along with ten times penalty. Questioning the said proceedings I have filed a revision and the 1st respondent passed final orders dated 29-8-2006 only waiving the penalty subject to the condition of payment of normal seigniorage fee of Rs.37,72,215/- within one month and the said orders were communicated to us in the month of September. Questioning the said proceedings I am filing this writ petition.

7. I submit that in para 10 of the impugned orders passed by the 1st respondent, it is stated that from letter dated 16-12-2005 of ADMG it is seen that due to lack of proper survey of the present working areas and the areas marked in S.No.53 in the sketch are different and which causes problems to the existing lease positions and further stated that the survey team have made suggestions to modify sketches appended to the lease deeds and it is also

stated that it may not be reasonable to say that lessee has encroached outside the leased area without alienation of full extent granted to us on the scaled map. It is also stated that the department officials who are present at the time of hearing had also stated that the entire précised area is not fit for usage of road metal and waste material which is also occurred. From the above it is clear that no proper survey was conducted and they themselves suggested to modify the sketches appended to the lease deeds. Unless a proper survey was conducted after giving reasonable opportunity to the lease holder making a claim of additional seigniorage fee without giving opportunity and without considering the objections if any submitted is illegal and arbitrary. Having themselves come to a conclusion that it may not be reasonable to say lessee has encroached outside the leased area and therefore I am not liable to pay any penalty. Apart from the same, the 1st respondent has also not considered several other contentions raised by us. We have also brought to the notice of the 1st respondent about the orders passed by the 3rd respondent himself in some other matter vide proceedings number 38987/R2-1/05, dated 9-1-2006 setting aside the orders of the ADMG dated 5-1-2006 advising to revise the demand after deducting the waste material not fit for usage of road metal and in the said order it is stated that the percentage of waste varies from 33.6% to 36.2%, whereas they have not applied the said principle in our matter. If all these aspects were taken into consideration there is no excess quantity of metal excavated by us and we are not liable to pay any amount. From the observation made in the impugned order dated 29-8-2006 itself it is clear that the allegations made against us are incorrect and the authorities have not applied their mind and passed orders mechanically in a routine manner.“

The learned Single Judge did not issue formal notice to the respondents and dismissed the writ petition at the admission stage by recording the following reasons:

> "As seen from the order passed by the third respondent, the petitioner was alleged to have committed two contraventions, namely, that she removed road metal over and above permitted quantity and that she removed the mineral from leased area as well as outside the lease area. She submitted her explanation on 17.05.2006 alleging that the area was leased out to one Chinnaiah and Mahankali Ravindra, who conducted quarry operations for fifteen years and that for quarry operations in the land, which was initially leased out to those persons, she cannot be held responsible. As seen from the order passed by the third respondent, in response to report called for, the fourth respondent submitted a report on 13.06.2006 to the effect that Chinnaiah and Ravindra obtained permits for transporting road metal measuring 4,000 cums and 2,100 cums respectively. When they only quarried the said quantity and after expiry of lease of these two persons, if any extra mineral is removed from the land, inference can always be drawn that the petitioner alone is responsible for removing the road metal from outside the leased area. The first respondent considered this aspect of the matter and thought it fit to waive the penalty while directing the petitioner to pay the normal seigniorage fee. This only shows that the petitioner did not even produce any material that for the road metal, she removed from the leased area she paid the seigniorage fee as per the Rules.
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> In any view, the finding recorded against the petitioner is a question of fact and therefore, it would not be proper for this Court to interfere in the matter.

> The first respondent considered all aspects of the matter while disposing of the revision petition filed by the petitioner. The same does not call for any interference. Therefore, the writ petition is dismissed. No costs."

We have heard learned counsel for the parties and perused the record. In our opinion, order dated 20.06.2006 passed by respondent No.3 is vitiated due to patent violation of the rules of natural justice and the revisional authority and the learned Single Judge committed serious error by rejecting the appellant's prayer for quashing the levy of seigniorage fee and ten times penalty.

A conjoint reading of show cause notice dated 04.04.2006 and reply dated 17.05.2006 submitted by the appellant shows that the latter had not only categorically denied the allegation of unauthorized quarrying but specifically pleaded that the unauthorized quarrying might have been done by preceding lessees. It was pointed out that at the time of grant of leases to it, the departmental official has not taken care to measure the existing pits made by the previous leaseholders Shri P. Chinnaiah and Shri Mahankali Ravindra. It was also pointed out that on earlier occasions, several local villagers and vadderas were conducting quarrying operations illegally in Survey No.53. Respondent No.3 did not advert to any of the points taken in the reply filed by the appellant and levied seigniorage fee with penalty. The casual manner in which respondent No.3 dealt with the matter is clearly borne out from the following extract of order dated 20.6.2006:

"Thus reply of M/s Vengamamba Stone Crusher is

not considerable and it is established that M/s Vengamamba Stone Crusher have extracted 83.827 cums. of road metal over and above the permitted quantity within the leased area and also outside the quarry lease areas."

The order passed by respondent No.3 further shows that he relied on the report sent by the Assistant Director of Mines and Geology. This is clearly revealed from the following extracts of the order impugned in the writ petition:

"The ADM&G, Rajahmundry in the reference last cited informed that previously two quarry lease were granted in favour of Sri P.Chinnaiah and Sri M.Ravindra over an extent of 10.00 acs., and 2.50 acrs respectively for Road Metal in S.No.54 of Chinasankarlapudi Village, Prathipadu Mandal, E.G. District and also stated that they have obtained transport permits for the quantity of 4000 cums., and 2100 cums., respectively.

Further, the ADM&G, Rajahmundry has reported that the total quantity of 6100 cums. of Road Metal dispatched by the lease holders have been deducted from the quantity of 89927 cums., dispatched by M/s.Vengamamba Stone Crushers as the area previously granted to the above two lease holders and the existing leased area of M/s.Vengamamba Stone Crusher are one and the same.

Finally, requested the DDM&G, Kakinada to initiate action for realization of amount under Rule 34(1) read with Rule 31 of APMMC Rules, 1966 and also under Rule 26 of APMMC Rules, 1966 for the quantity of 83827 cums of Road Metal against M/s.Vengamamba Stone Crusher.

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Thus the entire quantity is liable for penalty under Rule 26(2) of APMMC Rules, 1966. Thus the net quantity road metal to be penalized is arrived at 83.827 cums., and normal seig.fee along with penalty liable and

collectable under Rule 26(2) are detailed below:

Quantity	Mineral	Rate of Royalty	Normal S.Fee	10 Times Penalty	Total
83,827 cums.	Road Metal	45/- per cum.	37,72,215/-	3,77,22,150/-	4,14,94,365/-

Under the circumstances stated above, you are hereby requested to pay Rs.4,14,94,365/- towards normal S.Fee along with 10 times penalty as per Rule 26(2) of APMMC Rules, 1966 for illegal quarrying and illicit transportation of 83,827 cums., of Road Metal from S.No.53 of Chinasankarlapudi Village, Prathipadu Mandal, E.G. District. They should pay the said amount in the shape of treasury challan in the following head of account."

In our opinion, before relying on the report sent by the Assistant Director of Mines and Geology for the purpose of recording adverse finding against the appellant, respondent No.3 was duty-bound to make available a copy of the report of the latter and give it an opportunity to controvert the same. Similarly, while dealing with the question whether or not the appellant was actually guilty of unauthorized quarrying of road metal from Survey No.53 and outside the quarry lease area, respondent No.3 was duty-bound to advert to the contents of the reply to the show cause notice and then determine the liability, if any of the appellant. The failure of respondent No.3 to comply with these basics has resulted in grave injustice. Therefore, order dated 20.6.2006 is liable to be declared as vitiated due to violation of the rules of natural justice.

Adverting to the revisional order, we find that even though Secretary to Government took cognizance of the points taken in

the memo of revision and briefly referred to the arguments advanced on behalf of the parties, he too did not assign reasons for upholding the demand of seigniorage fee. The revisional authority did note that there was serious discrepancy in the marking of the areas in respect of which lease was granted to the appellant, but did not deal with the crucial issue and casually confirmed the levy of seigniorage fee. For the sake of reference, a portion of paragraph 10 and whole of paragraph 11 of the revisional order are extracted below:

> "10.....It is seen from the letter No.3840/Q1/2005, dated 16-12-2005 of Assistant Director of Mines and Geology, Rajahmundry due to lack of proper survey the present working areas and the areas marked in this survey number in the sketch are different and which causes problems to the existing lease positions and further stated that the survey team have made suggestion to modify the sketches appended to the lease deeds. It is also stated therein that it may not be reasonable to say that lessee has encroached outside the leased area without alienation of full extent granted to them on the scaled map. Further, it is observed that the Department officials present at the time of hearing have also stated that the entire precised area is not fit for usage of road metal and waste material which is also occurred.
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> 11. In the above circumstances, Government, by exercising the powers conferred under Rule 35-A of APMMC Rules, 1966, hereby waive the penalty only, subject to condition that the revision petitioner shall pay the normal seigniorage fee of Rs.37,72,215/- within one month, from the date of receipt of these orders. The Revision Application is disposed of accordingly."

It is, thus, clear that the revisional authority also failed to

consider the points taken by the appellant in the revision petition and decide the same by assigning reasons.

In the order under challenge, the learned Single Judge simply referred to the factual matrix of the case and dismissed the writ petition without dealing with the crucial issue relating to gross violation of the rules of natural justice by respondent No.3 and revisional authority. This too has resulted in substantial failure of justice.

For the reasons stated above, the appeal is allowed. The order of the learned Single Judge is set aside. As a sequel to this, Writ Petition No. 22465 of 2006 filed by the appellant is allowed and orders dated 20.06.2006 and 29.08.2006 are quashed. However, it is made clear that the competent authority shall be free to pass fresh order in furtherance of show cause notice dated 04.04.2006, after supplying the appellant a copy of the remarks/report sent by the Assistant Director, Mines and Geology and giving it reasonable opportunity to controvert the same.

As a sequel to disposal of the writ appeal, W.A.M.P.No. 2727 of 2006 filed by the appellant for interim relief is disposed of as infructuous.

G.S.SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

11.12.2006

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